

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

MARK DEMING,

Plaintiff,

vs.

MONTANA SEVENTH JUDICIAL
DISTRICT COURT, RICHLAND
COUNTY; RICHLAND COUNTY et
al; CHARITY McLARTY, and ALI
MOULTON,

Defendants.

CV 21-19-BLG-SPW

ORDER ADOPTING
MAGISTRATE'S FINDINGS
AND RECOMMENDATIONS

The United States Magistrate Judge filed Findings and Recommendations on Deming's Complaint (Doc. 1), pursuant to the Court's IFP screening duty. (Doc. 6). The Magistrate recommended that the action be dismissed for failure to state a claim upon which relief could be granted because Deming attempts to challenge the validity of outstanding criminal judgments through a civil tort action. (Doc. 6 at 2). The Court notes that Deming has filed a habeas petition in response. See 1:21-CV-41-SPW-KLD.

Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate's Findings and Recommendation. Deming filed an objection on May 12, 2021. (Doc. 7).

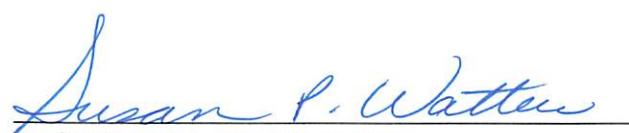
However, nowhere in Deming's objections does he challenge the magistrate's determination that a §1983 action cannot be the vehicle for the relief sought. Therefore the objection is not proper. Deming may continue his action through his habeas suit, if he so chooses. When neither party properly objects, this Court reviews the Magistrate's Findings and Recommendation for clear error.

McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000). After reviewing the Findings and Recommendation, this Court does not find that the Magistrate committed clear error.

IT IS ORDERED that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 6) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that this action is DISMISSED and the clerk shall enter a judgment of dismissal by a separate entry.

DATED this 30th day of June, 2021.



SUSAN P. WATTERS
United States District Judge